

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1113**September Term, 2023****DOJ-Pub. L. No. 118-50****Filed On:** June 13, 2024

TikTok Inc. and ByteDance Ltd.,

Petitioners

v.

Merrick B. Garland, in his official capacity as
Attorney General of the United States,

Respondent

Consolidated with 24-1130**BEFORE:** Katsas, Rao, and Childs, Circuit Judges

PROTECTIVE ORDER

This Protective Order shall govern the parties' production, use, and submission of Confidential Information or material claimed as Confidential Information in the course of cases No. 24-1113, 24-1130, and any consolidated cases, and shall preclude use of such Confidential Information for purposes other than cases No. 24-1113, 24-1130, and any consolidated cases except as described herein.

1. No document containing, referring to, or otherwise disclosing Confidential Information shall be publicly filed with the Court. Confidential Information shall be submitted to the Court only under seal in accordance with D.C. Circuit Rule 47.1 and Paragraph 3(a) of this Order.

2. Confidential Information shall mean any (i) trade secrets or other confidential research, development, or commercial information; and (ii) private personal information of employees and other individuals. Information that is or becomes available to a party through means other than as a result of a violation of this Order or a violation of other confidentiality requirements shall not constitute Confidential Information.

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3. For purposes of this matter, Confidential Information shall be designated, marked, and managed as follows:

a) Briefs, pleadings, and other material filed with the Court that contain or disclose Confidential Information shall be filed in accordance with D.C. Circuit Rule 47.1, with two sets of briefs filed and all portions that include Confidential Information filed only under seal.

b) A party or non-party may designate as Confidential Information any portion of a document, material, or other information (electronic or otherwise) in the course of this action. Those portions of documents or other material containing Confidential Information shall be marked "SUBJECT TO PROTECTIVE ORDER IN CASES NO. 24-1113 & 24-1130" and may also include the case numbers for other cases in which the material is subject to a protective order. If only a portion or portions of the material on a page qualifies for protection under this Order, the party or non-party claiming Confidential Information must identify the protected portion or portions. The party or non-party asserting a claim of Confidential Information shall also make available a version of the document that redacts those portions for which it has asserted a claim of Confidential Information. This protective order does not govern any ex parte submission by the government of classified or otherwise protected national-security information.

c) A party who intends to present argument or other material containing Confidential Information shall so advise the parties and the Court so that any appropriate steps may be taken before such presentation is made and shall arrange for the pages of any transcript containing such information to be marked "SUBJECT TO PROTECTIVE ORDER IN CASES NO. 24-1113 & 24-1130" and may also include the case numbers for others in which the material is subject to a protective order.

4. Confidential Information shall be received by and held in strict confidence by the parties and shall be used only for the purposes of this action, and shall not be used (except by the party or non-party who designated such information as Confidential Information) for any purpose outside of this action except as provided herein. Except as provided in Paragraph 7 of this Order, Confidential Information may be disclosed only to: (i) the Court and court personnel, including any court reporters, provided that any pleading or other document filed with the Court that contains or discloses material

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designated as Confidential Information is filed under seal according to Paragraph 3(b) of this Order, (ii) Petitioners and counsel for Petitioners, including in-house counsel for Petitioners and their respective employees assisting in this action and outside counsel retained by Petitioners to represent them in this action, including employees, contractors, and clerical, secretarial, and paralegal support staff, (iii) employees, contractors, or unpaid interns of the United States involved in this action, and (iv) after signature by each such person of the Certification (Attachment A hereto) that he or she has received a copy of this Order and agrees to be bound thereby, testifying or consulting experts, and their support staff, in connection with this action. Each of the persons described in (i)-(iv) of this Paragraph 4 shall be a "Qualified Person."

5. No Qualified Person listed in Paragraph 4(ii)-(iv) of this Order may disseminate any Confidential Information except as expressly authorized in this Order or as required by law, including a court order. If Confidential Information is disclosed other than as authorized by this Order, the party responsible for the unauthorized disclosure shall promptly take remedial action, including by notifying the designating party or non-party of the disclosure and making all reasonable efforts to obtain the return of the Confidential Information and to prevent further unauthorized disclosure.

6. Counsel of record for each party shall be responsible for obtaining all Certifications required by this Order in advance of any disclosure that may be permitted by this Order, and maintaining in safekeeping all original Certifications.

7. Nothing in this Order shall limit the use by a party of its own Confidential Information, nor prevent a party or non-party from disclosing its own Confidential Information to any person. Such disclosures shall not affect any designation made pursuant to the terms of this Order. Nothing in this Order shall limit the government's use of Confidential Information for other governmental purposes, including any administrative, regulatory, or criminal investigation or enforcement proceedings; disclosure to Congress or to any duly authorized committee or subcommittee of Congress; national-security analysis or actions, including disclosure to any foreign governmental entity of a United States ally or partner to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; and foreign-policy analysis and implementation.

8. Any party may challenge the designation of Confidential Information by serving written notice of such challenge on counsel for the designating party or non-party within 14 days of receiving documentation or material. The party opposing the Confidential Information designation may then file an appropriate motion or other submission with the Court. Challenged material that is the subject of a proper motion

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shall be considered Confidential Information until the motion is considered and ruled upon.

9. Confidentiality under this Order is to be maintained both during and after the final disposition of this action.

10. The production, use, and submission, pursuant to the terms of this Order, of Confidential Information shall not be construed as a waiver by any person or entity of any claim of Confidential Information.

IT IS SO ORDERED.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk

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No. 24-1113**September Term, 2023****ATTACHMENT A****Certification**

I, _____, hereby certify under penalty of perjury that I have received a copy of and read the Protective Order Governing Confidentiality relating to the confidentiality of information in *TikTok Inc., et al. v. Garland*, Case No. 24-1113 (D.C. Cir.), and *Firebaugh v. Garland*, Case No. 24-1130 (D.C. Cir.), and I agree to, and will, keep information confidential in accordance with the terms of said Protective Order Governing Confidentiality.

Signature_____
Date_____
Affiliation or Employer